

REFERENCE TITLE: emergency room physician guaranty fund

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HB 2818**

Introduced by  
Representatives Sinema: Biggs

### AN ACT

AMENDING TITLE 20, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9;  
AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING  
SECTION 41-3018.01; RELATING TO THE EMERGENCY ROOM PHYSICIAN GUARANTY FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Title 20, chapter 3, Arizona Revised Statutes, is amended  
3 by adding article 9, to read:

4           ARTICLE 9. EMERGENCY ROOM PHYSICIAN GUARANTY FUND

5           20-697. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "BOARD" MEANS THE EMERGENCY ROOM PHYSICIAN GUARANTY FUND BOARD.

8 2. "FUND" MEANS THE EMERGENCY ROOM PHYSICIAN GUARANTY FUND.

9 3. "MEMBER INSURER" MEANS ANY PERSON WHO WRITES HEALTH OR SICKNESS  
10 INSURANCE IN THIS STATE, INCLUDING CASUALTY INSURERS THAT WRITE HEALTH OR  
11 SICKNESS INSURANCE.

12 4. "NET DIRECT WRITTEN PREMIUMS" MEANS DIRECT GROSS PREMIUMS WRITTEN  
13 IN THIS STATE ON INSURANCE POLICIES TO WHICH THIS ARTICLE APPLIES, LESS  
14 RETURN PREMIUMS AND DIVIDENDS PAID OR CREDITED TO POLICYHOLDERS ON THE DIRECT  
15 BUSINESS. NET DIRECT WRITTEN PREMIUMS DO NOT INCLUDE PREMIUMS ON CONTRACTS  
16 BETWEEN INSURERS OR REINSURERS.

17           20-697.01. Emergency room physician guaranty fund;  
18           reimbursement procedure for payment of  
19           compensation

20 A. THE EMERGENCY ROOM PHYSICIAN GUARANTY FUND IS ESTABLISHED  
21 CONSISTING OF ASSESSMENTS COLLECTED PURSUANT TO THIS ARTICLE AND INTEREST  
22 EARNED ON THOSE MONIES. THE BOARD SHALL ADMINISTER THE FUND. THE FUND IS  
23 NOT SUBJECT TO LEGISLATIVE APPROPRIATION, AND EXPENDITURES FROM THE FUND ARE  
24 NOT SUBJECT TO OUTSIDE APPROVAL NOTWITHSTANDING ANY STATUTORY PROVISION TO  
25 THE CONTRARY.

26 B. MONIES RECEIVED PURSUANT TO THIS ARTICLE SHALL BE DEPOSITED  
27 DIRECTLY IN THE FUND. ON NOTICE FROM THE BOARD, THE STATE TREASURER SHALL  
28 INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND  
29 MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND. MONIES IN THE  
30 FUND SHALL NOT REVERT TO OR BE DEPOSITED IN ANY OTHER FUND, INCLUDING THE  
31 STATE GENERAL FUND. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF  
32 SECTION 35-190 RELATING TO THE LAPsing OF APPROPRIATIONS.

33 C. MONIES IN THE FUND SHALL ONLY BE USED TO PAY EMERGENCY ROOM  
34 PHYSICIANS IN THIS STATE AS PROVIDED FOR IN THIS SECTION.

35 D. THE BOARD SHALL ADOPT RULES PRESCRIBING:

36 1. THE METHODOLOGY TO DETERMINE THE REASONABLE AMOUNT OF COMPENSATION  
37 TO BE PAID TO EMERGENCY ROOM PHYSICIANS FOR THEIR SERVICES.

38 2. THE PROCEDURE TO DISTRIBUTE MONIES FROM THE FUND TO EMERGENCY ROOM  
39 PHYSICIANS IN THIS STATE THAT ARE PAID LESS THAN THE AMOUNT DETERMINED BY THE  
40 BOARD SO THAT THEIR COMPENSATION IS AT LEAST EQUAL TO THAT AMOUNT.

41 E. THE BOARD SHALL DISTRIBUTE ALL MONIES FROM THE FUND TO EMERGENCY  
42 ROOM PHYSICIANS PURSUANT TO THE RULES ADOPTED BY THE BOARD.

1       20-697.02. Emergency room physician guaranty fund board:  
2                   members; compensation

3       A. THE EMERGENCY ROOM PHYSICIAN GUARANTY FUND BOARD IS ESTABLISHED  
4       CONSISTING OF ELEVEN MEMBERS WHO ARE APPOINTED BY THE GOVERNOR. MEMBERSHIP  
5       ON THE BOARD SHALL BE FOR A TERM OF THREE YEARS.

6       B. THE GOVERNOR SHALL APPOINT THE MEMBERS OF THE BOARD FROM A LIST OF  
7       PERSONS SUBMITTED TO THE GOVERNOR BY THE DIRECTOR. THE BOARD SHALL BE  
8       COMPOSED OF:

9       1. THREE MEMBERS WHO REPRESENT DIFFERENT INSURERS THAT ARE AUTHORIZED  
10      TO TRANSACT HEALTH OR SICKNESS INSURANCE BUSINESS IN THIS STATE.

11      2. ONE MEMBER WHO IS A CASUALTY INSURANCE PRODUCER RESIDING IN THIS  
12      STATE.

13      3. THREE MEMBERS WHO REPRESENT HOSPITALS IN THIS STATE.

14      4. TWO MEMBERS WHO REPRESENT EMERGENCY ROOM PHYSICIANS IN THIS STATE.

15      5. ONE MEMBER WHO IS A PUBLIC HEALTH ADVOCATE.

16      6. ONE MEMBER OF THE PUBLIC.

17      C. THE BOARD SHALL CONDUCT PERIODIC MEETINGS. MEETINGS SHALL BE HELD  
18      ON THE CALL OF THE DIRECTOR OR ON THE WRITTEN REQUEST OF ANY TWO MEMBERS OF  
19      THE BOARD.

20      D. SUBJECT TO THE POWERS OF THE DIRECTOR, THE BOARD SHALL ADMINISTER,  
21      OPERATE AND MANAGE THE FUND PURSUANT TO THIS ARTICLE. THE BOARD SHALL ADVISE  
22      AND COUNSEL WITH THE DIRECTOR ON MATTERS RELATING TO THE REIMBURSEMENT FOR  
23      SERVICES RENDERED BY EMERGENCY ROOM PHYSICIANS.

24      E. MEMBERS OF THE BOARD ARE NOT ELIGIBLE TO RECEIVE COMPENSATION AND  
25      ARE NOT ELIGIBLE FOR REIMBURSEMENT OF TRAVEL EXPENSES AS AUTHORIZED BY TITLE  
26      38, CHAPTER 4, ARTICLE 2, BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES  
27      INCURRED BY THEM AS MEMBERS OF THE BOARD FROM THE ASSETS OF THE FUND.

28       20-697.03. Powers and duties of the board

29      A. THE BOARD SHALL:

30      1. INVESTIGATE CLAIMS BROUGHT AGAINST THE FUND AND ADJUST, COMPROMISE,  
31      SETTLE AND PAY COVERED CLAIMS TO THE EXTENT OF THE FUND'S OBLIGATION AND DENY  
32      ALL OTHER CLAIMS.

33      2. ASSESS MEMBER INSURERS PURSUANT TO SECTION 20-697.05.

34      3. HANDLE CLAIMS THROUGH ITS EMPLOYEES OR THROUGH OTHER PERSONS  
35      DESIGNATED AS SERVICING FACILITIES. DESIGNATION OF A SERVICING FACILITY IS  
36      SUBJECT TO THE APPROVAL OF THE DIRECTOR.

37      4. REIMBURSE EACH SERVICING FACILITY FOR OBLIGATIONS OF THE MONIES  
38      PAID BY THE FACILITY AND FOR EXPENSES INCURRED BY THE FACILITY WHILE HANDLING  
39      THE CLAIMS ON BEHALF OF THE FUND AND PAY THE OTHER EXPENSES OF THE FUND  
40      AUTHORIZED PURSUANT TO THIS ARTICLE.

41      B. THE BOARD MAY:

42      1. APPEAR IN, DEFEND AND APPEAL ANY ACTION ON A CLAIM THAT IS BROUGHT  
43      AGAINST THE FUND.

44      2. EMPLOY OR RETAIN THESE PERSONS THAT ARE NECESSARY TO HANDLE CLAIMS  
45      AND PERFORM OTHER DUTIES OF THE FUND.

1       3. BORROW MONIES NECESSARY TO CARRY OUT THE INTENT OF THIS ARTICLE  
2 PURSUANT TO THE PLAN OF OPERATION.

3       4. SUE AND BE SUED.

4       5. NEGOTIATE AND BECOME A PARTY TO THESE CONTRACTS THAT ARE NECESSARY  
5 TO CARRY OUT THE INTENT OF THIS ARTICLE.

6       6. PERFORM OTHER ACTS THAT ARE NECESSARY OR PROPER TO CARRY OUT THE  
7 INTENT OF THIS ARTICLE.

8       20-697.04. Plan of operation

9       A. THE BOARD SHALL SUBMIT TO THE DIRECTOR A FUND PLAN OF OPERATION AND  
10 ANY AMENDMENTS NECESSARY OR SUITABLE TO ENSURE THE FAIR, REASONABLE AND  
11 EQUITABLE ADMINISTRATION OF THE FUND. THE PLAN OF OPERATION AND ANY  
12 AMENDMENTS BECOME EFFECTIVE ON APPROVAL IN WRITING BY THE DIRECTOR.

13       B. IF THE BOARD FAILS TO SUBMIT A SUITABLE PLAN OF OPERATION OR IF AT  
14 ANY TIME THE BOARD FAILS TO SUBMIT SUITABLE AMENDMENTS TO THE PLAN, THE  
15 DIRECTOR SHALL ADOPT ANY PLAN OR AMENDMENT THAT IS NECESSARY OR ADVISABLE TO  
16 EFFECTUATE THE PROVISIONS OF THIS ARTICLE AND THE PLAN OR AMENDMENT SHALL  
17 CONTINUE IN FORCE UNTIL MODIFIED BY THE DIRECTOR OR SUPERSEDED BY A PLAN  
18 SUBMITTED BY THE BOARD AND APPROVED BY THE DIRECTOR. ALL MEMBER INSURERS  
19 SHALL COMPLY WITH THE PLAN OF OPERATION.

20       C. THE PLAN OF OPERATION SHALL:

21       1. ESTABLISH THE PROCEDURES FOR EXECUTION OF ALL POWERS AND DUTIES OF  
22 THE BOARD.

23       2. ESTABLISH PROCEDURES FOR HANDLING ASSETS OF THE FUND.

24       3. ESTABLISH THE AMOUNT AND METHOD OF REIMBURSING MEMBERS OF THE BOARD  
25 PURSUANT TO SECTION 20-697.02.

26       4. ESTABLISH PROCEDURES BY WHICH CLAIMS MAY BE FILED WITH THE FUND AND  
27 ESTABLISH ACCEPTABLE FORMS OF PROOF OF COVERED CLAIMS.

28       5. ESTABLISH REGULAR PLACES AND TIMES FOR MEETINGS OF THE BOARD.

29       6. ESTABLISH PROCEDURES FOR RECORDS TO BE KEPT OF ALL FINANCIAL  
30 TRANSACTIONS OF THE FUND, THE BOARD AND ITS AGENTS.

31       7. PROVIDE THAT ANY MEMBER INSURER AGGRIEVED BY ANY FINAL ACTION OR  
32 DECISION OF THE FUND MAY APPEAL TO THE DIRECTOR WITHIN THIRTY DAYS AFTER THE  
33 ACTION OR DECISION.

34       8. ESTABLISH THE PROCEDURES FOR RECOMMENDATIONS TO THE DIRECTOR FOR  
35 APPOINTMENTS TO THE BOARD.

36       9. CONTAIN ADDITIONAL PROVISIONS THAT ARE NECESSARY OR PROPER FOR THE  
37 EXECUTION OF THE POWERS AND DUTIES OF THE BOARD.

38       20-697.05. Assessments

39       A. AS A CONDITION OF THE INSURER'S AUTHORITY TO TRANACT INSURANCE IN  
40 THIS STATE, THE BOARD SHALL ASSESS EACH MEMBER INSURER IN AMOUNTS THAT ARE  
41 NECESSARY TO PAY THE OBLIGATIONS OF THE FUND PURSUANT TO SECTION 20-697.01,  
42 THE EXPENSES OF HANDLING COVERED CLAIMS, THE COST OF INVESTIGATIONS AND OTHER  
43 EXPENSES AUTHORIZED PURSUANT TO THIS ARTICLE.

44       B. THE ASSESSMENT OF EACH MEMBER INSURER SHALL BE IN THE PROPORTION  
45 THAT THE NET DIRECT WRITTEN PREMIUMS OF THE MEMBER INSURER FOR THE PRECEDING

CALENDAR YEAR PAID ON HEALTH OR SICKNESS INSURANCE BEARS TO THE NET DIRECT WRITTEN PREMIUMS OF ALL MEMBER INSURERS FOR THE PRECEDING CALENDAR YEAR PAID ON HEALTH OR SICKNESS INSURANCE. THE BOARD SHALL NOTIFY EACH MEMBER INSURER OF THE ASSESSMENT NOT LATER THAN THIRTY DAYS BEFORE IT IS DUE. THE BOARD SHALL NOT ASSESS A MEMBER INSURER IN ANY YEAR AN AMOUNT GREATER THAN ONE PER CENT OF THE MEMBER INSURER'S NET DIRECT WRITTEN PREMIUMS FOR THE PRECEDING CALENDAR YEAR PAID ON HEALTH OR SICKNESS INSURANCE.

C. IF THE MAXIMUM ASSESSMENT AND THE OTHER ASSETS OF THE FUND DO NOT PROVIDE IN ANY ONE YEAR AN AMOUNT SUFFICIENT TO MAKE ALL NECESSARY PAYMENTS FROM THE FUND, THE BOARD MAY PRORATE THE MONIES AVAILABLE AND THE BOARD SHALL PAY THE UNPAID PORTION AS SOON AS MONIES BECOME AVAILABLE. THE BOARD SHALL PAY CLAIMS IN ANY ORDER THAT IT DEEMS REASONABLE, INCLUDING THE PAYMENT OF CLAIMS AS THE CLAIMS ARE RECEIVED FROM THE CLAIMANTS OR IN GROUPS OR CATEGORIES OF CLAIMS.

D. THE BOARD MAY EXEMPT OR DEFER, IN WHOLE OR IN PART, THE ASSESSMENT OF ANY MEMBER INSURER, IF THE ASSESSMENT WOULD CAUSE THE MEMBER INSURER'S FINANCIAL STATEMENT TO REFLECT AMOUNTS OF CAPITAL OR SURPLUS LESS THAN THE MINIMUM AMOUNTS REQUIRED FOR A CERTIFICATE OF AUTHORITY BY ANY JURISDICTION IN WHICH THE MEMBER INSURER IS AUTHORIZED TO TRANSACT INSURANCE.

E. IN ADDITION TO ALL OTHER ASSESSMENTS, THE BOARD MAY ASSESS EACH MEMBER INSURER IN AN AMOUNT NOT TO EXCEED TWO HUNDRED DOLLARS PER YEAR FOR THE PURPOSE OF PAYING FOR OPERATING EXPENSES OF THE BOARD AND EMPLOYEES OF THE BOARD.

F. IF, AT THE END OF ANY CALENDAR YEAR, THE BOARD FINDS THAT THE ASSETS OF THE FUND EXCEED THE LIABILITIES OF THE FUND AS ESTIMATED BY THE BOARD FOR THE COMING YEAR, THE BOARD MAY REFUND TO THE MEMBER INSURERS IN PROPORTION TO THE CONTRIBUTION OF EACH MEMBER INSURER TO THE FUND THE AMOUNT BY WHICH THE ASSETS OF THE FUND EXCEED THE LIABILITIES. ALL REFUNDS WILL BE CONTINGENT ON THE RETURN OF A MEMBER INSURER'S CERTIFICATE OF CONTRIBUTION AND WILL BE IN AN AMOUNT EQUAL TO THE PREMIUM TAX OFFSET VALUE OF THE RELINQUISHED CERTIFICATE.

Sec. 2. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3018.01, to read:

41-3018.01. Emergency room physician guaranty fund board; termination July 1, 2018

A. THE EMERGENCY ROOM PHYSICIANS GUARANTY FUND BOARD TERMINATES ON JULY 1, 2018.

B. TITLE 20, CHAPTER 3, ARTICLE 9 IS REPEALED ON JANUARY 1, 2019.

### Sec. 3. Terms of initial board members

The initial members of the emergency room physician guaranty fund board shall assign themselves by lot to terms of one, two and three years in office. All subsequent members serve a three year term of office. The director of the department of insurance shall notify the governor's office on appointments of these terms.

1        Sec. 4. Purpose

2        Pursuant to section 41-2955, subsection E, Arizona Revised Statutes,  
3 the emergency room physician guaranty fund board is established to provide a  
4 mechanism for compensating emergency room physicians in this state.

5        Sec. 5. Requirements for enactment: two-thirds vote

6        Pursuant to article IX, section 22, Constitution of Arizona, this act  
7 is effective only on the affirmative vote of at least two-thirds of the  
8 members of each house of the legislature and is effective immediately on the  
9 signature of the governor or, if the governor vetoes this act, on the  
10 subsequent affirmative vote of at least three-fourths of the members of each  
11 house of the legislature.